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DE RUEHUJA #0343 0530707
ZNR UUUUU ZZH
P 220707Z FEB 07
FM AMEMBASSY ABUJA
TO RUEHC/SECSTATE WASHDC PRIORITY 8672
INFO RUEHOS/AMCONSUL LAGOS 6198
RUCPDO/DEPT OF COMMERCE WASHDC
RUEATRS/DEPT OF TREASURY WASHDC

UNCLAS ABUJA 000343

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STATE PASS TO USTR
TREASURY FOR DAN PETERS
USDOC FOR 3317/ITA/OA/KBURRESS
USDOC FOR 3130/USFC/OIO/ANESA/DHARRIS

E.O. 12958: N/A
TAGS: [ETRD](#) [KIPR](#) [NI](#)
SUBJECT: 2007 SPECIAL 301 REVIEW POST INPUT

Ref: State 7944

1. Given the very short time between when post learned that, for the first time, Nigeria had been nominated by industry for inclusion on the Special 301 list and the deadline for post submission, we can offer only limited input.

2. Nigerian industry, U.S. industry, and the Nigerian government all recognize the serious problems raised by IPR issues in Nigeria. In the trade and investment field, IPR stands out as an area in which there is political will to take action, and where authorities who deal with IPR issues have been very open to cooperation and collaboration with the U.S. and concerned industries. We have sent a considerable number of Nigerian officials to the U.S. for training through the U.S. Patent and Trademark Office. The U.S. DOJ OPDAT conducted several courses to train prosecutors on how to handle IPR cases. The Commerce Department Commercial Law Development Program has carried out professional and legal seminars on IPR issues here in Nigeria. All of these efforts have received the full cooperation of the GON, and have been very well attended by both senior and working level officials, including high court judges and agency heads. Nigerian police occasionally carry out well-publicized raids on caches of pirated goods. In the pharmaceutical field, there has been significant progress in reducing the amount of counterfeit drugs available.

3. The Nigerian recording industry has raised serious concerns about Chinese optical disc plants that have located in Nigeria. As noted by IIPC the government has begun to respond and has enacted new optical disc regulations that are now being put into place.

4. Post agrees with the IIPA report that enforcement is the weak spot. This problem is not confined to IPR issues, however. In virtually every field of legal and criminal activity, enforcement is very weak. Even in high profile, high priority areas for the GON such as anti-corruption efforts and efforts to combat so-called 419 fraud, or areas where there is intense international pressure and scrutiny such as drug trafficking, enforcement continues to be limited, slow and ineffective, reflecting the very low capacity of Nigerian law enforcement institutions. This is a systemic problem that will not yield to quick fixes or even higher levels of political attention.

5. Although we do not dispute that software, print and particularly optical media piracy is a serious and growing problem in Nigeria, post is concerned that placing Nigeria on the Special 301 Watch list could be counterproductive to our goals. We would note the GON is aware of the problem, is taking steps to address the problem and the attitude of GON officials responsible for IPR issues is open and responsive to U.S. messages on the issue. We understand that DOC's CLDP is preparing a proposal for USAID/Washington central funding to

do expanded IPR programs in Nigeria. Placing Nigeria on the Watch List risks turning a cordial, cooperative relationship into one that is more adversarial and defensive, and ultimately less productive.

¶16. The timing in particular is problematic. Nigeria's current president will be stepping down in the face of term limits following an election in April and a new President will take office in May. Placing Nigeria on the 301 Watch List just as the new administration enters office will be politically awkward. On a practical level, the newly elected parliament will be officially seated in late May and then adjourn for the summer, with parliament resuming work in the fall. New ministers and appointees will be settling in, but in general very little government activity will be taking place until fall, at which time a number of urgent post-electoral issues are likely to dominate the political agenda. It is highly unlikely that the Government of Nigeria would be able to focus much attention on IPR issues and accomplish IIPA's list of proposed actions for 2007 in 2007, which would set the stage for a 2008 finding that Nigeria had failed to take action as requested and ratcheting up negative rhetoric at about the point where we could otherwise expect to be getting some traction in addressing IPR issues under the new government.

¶17. For the reasons given above, post would not recommend putting Nigeria on the Special 301 list for 2007, the admitted problems with IPR enforcement notwithstanding. We can ensure that the appropriate GON officials are aware that Nigeria was nominated for the 2007 list, and is likely to be nominated again in 2008, so that they can be prepared to offer a country submission in the 2008 process.

CAMPBELL